

THE HIGH COURT OF THE WESTERN PACIFIC
(CRIMINAL JURISDICTION)

BEFORE: The Honourable Mr. Justice J. Bodilly
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Honiara in the British Solomon
Islands Protectorate on Wednesday
the 5th ~~October~~ day of October
1966 at 1030 o'clock in the
fore noon.

REGINA

versus

DAVID KIO

For the Crown:

Asst. G. Hind Langh.

For the Accused:

In person unrepresented.

Interpreter:

- (1) *William Togone (Reefs language)*
(2) *Matthew Kuri (Egela)*
(3) *Elaijah Torowai (Mawa)*
(4) *David Haolo (Bugotu)*

Charge explained to the accused: by Registrar

Accused when called upon to plead says:

FIRST COUNT: Not Guilty

THIRD COUNT: Not GUILTY

SECOND COUNT: Not Guilty

FOURTH COUNT: Not Guilty

Court enters a plea of:

FIRST COUNT: Not Guilty

THIRD COUNT: Not Guilty

SECOND COUNT: Not Guilty

FOURTH COUNT: Not Guilty

Interpreter: David Hoala. Sworn on Bible.

Mr. Hindhaugh: I will proceed directly with the evidence.

PWI: John Salusu:

Honiara.

Sworn on Bible.

I am a domestic servant and work for Mr. Cameron. I live in his servants quarters. There are two rooms in my quarters. I use one for sleeping and the other I keep my things in. There is only one door to the outside. That leads into the spare room and the exit from the sleeping room is through the spare room. There is a wooden door between the two rooms. Both doors can be shut by a bolt on the inside. Each door has one bolt. The bedroom door can be locked from both sides.

On the night of 5.8.66. I slept in my quarters. I went to bed at about 12.30 a.m. on 6th. Before I went to bed I closed but did not lock the outside door to the quarters. My things were all in the spare room. My clothes were in a box and my money I put on top of a narrow shelf above the door. In the box containing my clothes there was a photograph. My money I put into my passbook and put on the shelf. There was seven dollars. I slept in the bedroom. I bolted the bedroom door on the inside. I was not disturbed that night. In the morning when I got up I found that the bedroom door was bolted from the ~~xxxx~~ outside and I had to climb out of the window. I did that and went round and found the outside door to the quarters open. I then searched and found my box open. I found a lot of my clothes missing. Five pieces were missing. The photograph was also missing. I also found that the seven dollars from my passbook had gone. I went to the police and reported.

On the 8th August I again went to the police station. I went to the charge office. The accused was present there and some police on the floor were two suitcases. The police opened them. I looked inside. I saw two pieces of clothing ~~xx~~ and a photograph. The clothing was mine and the photograph also. It was a photo of my employers ~~xxxx~~ daughter.

I took all of the clothes out of the box and I found three more pieces of clothes which were mine.

(Five pieces of cloth shown to W)

I identified the blue and green piece first. They had been stitched by my wife. (Put in Ex A)

I identified the two red pieces and the one brown and green piece because I was present when my wife bought ~~them~~. She bought the three pieces at the same time. (Put in Ex B)

I identify the photograph. That is Mrs Camerons ~~small~~ daughter. When Mrs Cameron and Mr Cameron were packing to go to England I helped Mrs Cameron pack and I kept this photo which she was going to throw away. This packing took place about two and a half months before now.

Ex A

Ex B

This packing took place when Mrs Cameron's daughter went away. Mr and Mrs Cameron have themselves gone since.

When I took those things out of the box the Acc: was present. I told the police that they were mine. The acc: said that they were his and that he had bought them in the store.

XX by Acc: lock

I did not ~~shut~~/the door of my spare room before I went to bed because I used to keep the food for my children in there and they came early in the morning to get what they wanted. I never locked that room at night. In fact ~~me~~ my wife and my children all slept in the same room, but I left the spare room door open because the children were too small to get at the bolt. And They used to get up very early and want to go out. Because I did not lock my door I did not mean that anyone could come in. I never thought of anyone coming and stealing my childrens food.

At the police station it was a policeman who opened the box. The box was the Acc:s box. A polieman told me so in the acc's presence.

I know this cloth because I and my wife bought it together. When I bought my cloth there was more of the same kind left in the shop. Even if you also bought some of the same cloth, two of my pieces are sown up (Ex A). I know the colour of the cotton which my wife used and I identify her sewing. (It is criss-cross machined in an unusual way).

I did not see you take the cloths from the house.

I bought the cloth at the Trading Co. and Leong Hing store. I cannot say if othe people also bought cloth in those shops.

No Re X.

John Briney

PW2, Alinanahe.

Wife of PW1

Sworn on Bible.

PW1 is my husband. We live together in servants quarters. On the morning of 6.8.66 I found clothes and money missing from our quarters. They were missing from our box. There were nine fathoms of cloth missing. ~~xxxxxxx~~ I do not know how many peices it was. On the 8.8.66 I went to the police station. I found my husband there. There I saw my cloth and also a photograph of ours. I knew the cloth by the colours and also my own sewing. (Ex A shown to W:) Those cloths I sewed. (Ex B shown to W:) Those I recognise because I bought them. (Ex C shown to W:) That is a photo of Mrs Cameron's daughter which she gave us to keep.

XX by Acc:

On the night of 5.8.66 the door was shut but not locked

We did not lock the door because we never thought this thing would happen. At the police station ~~exp~~
I did not see the cloth taken from any box. It was already out. Others can sew calicos but that is my sewing on those calicos. I bought the cloth at the Trading Co. and Leong Hing Store. I do not know if you can sew or not.

No Re X.

Souly B. B. B.

(Interpreter. Elijah Tarowai. Sworn on Bible.)
(Does not seem to speak same language as W:)
Interpreter Walter Togani can speak it)

PW3. Selwyn Lamota
Honiara.

Sworn on Bible

I live in Mendana Hotel servants quarters. I know the Acc: He came to stay in my quarters on 3.8.66. He shared my room. On 5.8.66 I left the house at 6.15¹² and went to Kukum. There I saw Acc: I went home to my quarters at ~~at~~ about ~~XXXXXX~~ 3 a.m. and I saw Acc: at about 8.15 p.m. ~~Acc:~~ I got back to my quarters about 3 a.m. ~~the~~ I saw the post office clock. ~~There~~ The Acc: was not there when I got home. I went to bed. During the night I was disturbed by the acc: opening his box which he kept in my quarters. I know it was the acc: because he sleeps ~~XXXXXXXXXX~~ on the bunk below mine. When I woke up in the morning acc: was in his bunk.

On 8.8.66 the police came to my house. The acc: was in the house. Later the same day the police landrover ~~ex~~ came to the house. The acc: was ~~XXXXXXXXXX~~ brought in the landrover to the house. The acc: went into the house and took up his box. I asked him where he was going. He did not answer. He got into the landrover. That box was Acc: box.

XX by Acc:

At Kukum ~~XXXXXX~~ you were gambling. The Box was your box. I did not see you take anything out of the box. I heard you make a noise with your box but I did not look to see what you were doing with it.

I did not hear any conversation between you and Constable Kere when you came in the landrover to get your box. When you took the box it was not open. I did not know the contents of the box.

No Re X.

Souly B. B. B.

PW4 Samson Kiere.

I74 Det Constable Police Honiara.
Sworn on Bible.

On 6.8.66 I went to Lamota's house. There I interviewed the acc: I made further enquiries and returned to the house later the same day. I found acc: ~~Chxxxxx~~ in his brother's house. I took him in the landrover back to his quarters. I told him to fetch his box which he did. I took him to the police station. At the police station John Salusu came also. (PWI). I opened the box and PWI identified five pieces of cloth. He took them out of the box himself. There were also other things in the box. The Acc: was present. PWI took the things out and said the calicos were his. The Acc: said that he himself had bought them. PWI also found a photograph in the box. When the PWI took the photograph out of the box the Acc: said it was given to him, the acc:, by Mr Corner. I took charge of the things. I identify Ex A, B and C. Later the same day I brought PW2 to the police station and showed her the things. As a result of all this I arrested the acc: I kept the exhibits until this case.

XX by Acc:

When ~~xxx~~ came to your quarters the first time you showed me some books. They were your books. I did not know your box was in Selwyn's house. I know the box was your box because it has your name on it. I asked you if it was your box but you made no reply. You put it in the landrover. The box was shut.

No Re X.

Selwyn Boring

PW5. Wilfred Benjamin Kiriau.

Sub Inspector Police, Honiara.

Sworn on Bible.

I live in Police married quarters. It is a standard IX quarter. It has a verandah. Off the verandah there are three rooms. Two I use as bedrooms and one as a store room. We live largely on the verandah. It is an open verandah. All the rooms open onto the verandah.

On 7.8.66 I was at home. I was the last to go to bed. I tidied up for the night and I closed the storeroom door. I did not lock it. I looked round and saw that all was in order. My household sack of rice was there in its usual place. My bicycle torch lamp I left on the verandah wall. That was not shut in. There ~~only~~ only the one door into the storeroom, which opens from the verandah. I went to bed. I was not disturbed that night. The children got up first next morning and then I got up. I found ~~children~~ ^{store room} door open. I took no notice. I thought that

~~I thought~~ the children might have gone in. At lunch time I discovered the sack of rice was missing. I also could not find my torch. I reported this to the police. I also enquired among my children. This sack of rice was given to me by my brother at the end of July and it had his name on it. "D. Kiriau". And underneath the letters DOM. It was marked with marking pencil.

Ex D

(W: shown half bag rice.) That is my rice.
(Put in Ex D).

On 10.8.66 ~~xxx~~ at 9 a.m. Det. Sub. Inspector Gina showed me Ex ~~D~~ at the police station and I identified it. I have never had another sack marked like that one.

XX by Acc:

I have no reason for not locking my storeroom.
Acc: was not present when I was shown Ex D.
Anyone could write the name on Ex D. I did not write it myself. I was not present when Inspector Gina showed you Ex D.

ReX by Hindhaugh:

The writing on the bag Ex D is as it was when my brother gave it to me.

Loulyn Boring

PW 6. Laisa Sawaea.

Lengakiki Village. Sworn on Bible.

I am the wife of Alfred Namalea. I live with him on Lengakiki ridge. I know the acc:. He is my husband's brother.

On Monday 8.8.66 I saw the acc. He came to our house that morning. He was not staying with us. He brought with him Ex D. (W: identifies Ex D). He brought it into the house and put it under the sink and went and sat down.

On 10.8.66. Inspector Gina came to the house. Gina was shown the bag Ex D by my husband. Gina took it away.

XX by Acc:

I did not notice the name D Kiriau on the bag when you brought it in but I did when Inspector Gina came to take it away. The Acc: was not present when the inspector took Ex D.

No Re X.

Loulyn Boring

PW7 Alfred Nimalea.

Honiara. Sworn on Bible.

I am the acc:'s brother. Sometimes he comes to my house.

On 8th August I found Ex D in my house. (Identifies Ex D). It was under the sink. I moved it into the storeroom.

On 10.8.66 Inspector Gina came to my house. I spoke with the inspector and then I gave him Ex D. The inspector pointed out to me the name on the bag. The inspector took away the bag Ex D.

XX by Acc:

When I moved the bag from under the sink I did not notice the name D Kiriau on it. I just moved the bag.

The Acc; was not with the inspector when he came for the Ex D.

No Re X

By Court:

I was out when the bag Ex D was brought to my house.

John Holden Gina

PW8. John Holden Gina.

Det Sub. Inspector Police Honiara.
Sworn on Bible.

On 9.8.66 I charged and cautioned the acc:
I wrote down the charge and caution. The acc: signed the caution. The acc: made a reply. I wrote down what he said. I read it back and he signed it as correct. I also signed. I subsequently translated the Pidgin to English.

(Acc: does not object to statement)

(Statements read and put in Ex E original and E^I translation)

On that same morning before I took the statement I had received a complaint from Inspector Kiriau. ~~after~~ My first enquiry was concerning calicos. After the complaint from Kiriau I started to investigate the complaint regarding the rice. On the 10.8.66 I went to PW7's house. There I was shown Ex D. (Identifies Ex D) I took possession of the bag. I showed it to Inspector Kiriau and I then interviewed the accused again. I charged him with the theft of the Ex D. I cautioned and charged him with the previous procedure and he made a statement. I wrote it down. I read it back and he signed as correct. Afterwards I also made a translation of the pidgin to English.

(Acc: does not object to statement- Original and translation put in Ex F and F^I)

Ex E and E^I

Ex F and F^I

I kept the Ex D in my custody till I produced it to the court below.

XX by Acc:

The reason why I did not take you to PW7s house was because I had sent ~~you~~ already to Roverison in remand. I did not think it necessary to take ~~you~~ with me. I do not know who wrote the name on Ex D. I cannot say if the name was on Ex D when it arrived at PW7s house or not. You were not present when the rice was identified by Inspector Kiriau.

No Re X.

Subj. Biting.

5.10 p.m.

Court Adj to a.m. 7th August 1966.

Acc: to remain on custody remand.

J.B.

0900 7.10.66 Ct reassembles as before.

Mr. Hindhaugh asks to amend 4th Count by deletion of words "and one torch" to a total value of three dollars forty cents. Count amended accordingly.

Accused asked to plead to charge as amended.
Pleads: Not Guilty.

J.B.

Mr. Hindhaugh: My evidence is closed.

Defence.

Rights of defence explained to accused:

Accused elects to give evidence on oath:

Accused:

David Kio.

Sworn on Bible.

I deny that I entered Salusu's house (PWI).
The police arrested me from the house where I live.

They took me to the police station. I took with me one of my boxes. I have two boxes. The other box ~~was~~ in PW7's house. The other one ~~was~~ in PW3's house. The police took me to the police station and asked me about these things. I was sitting on a table and the police brought my other box from PW3's house. Constable ^(PWI) Kere opened the box. PW1 was also there. Salusu said the calicos were his but I say they are mine. I bought them. I asked Inspector Gina to take my statement but he refused to take it till next day. They put me in custody till next day and then questioned me. I gave my statement. They read it back to me and asked me if it was correct and I said that it was. They asked me to sign it and I did so. Then they brought me to the Magistrate. The Magistrate committed me to this Court. Then I was remanded in custody. On the 10.8.66 Gina came to me again and took me to the police station again. He ~~showed~~ showed me Ex D and asked if it was mine. I said it was mine. He then picked up the rice and said I was lying. I denied I was lying. Then he took another statement from me. In that statement I told Gina it was my rice. He read it back. I said it was correct and I signed it. Then Gina sent me back to Rove remand.

I bought the calicoes from the Trading Co and also from Leong Hing Store. I do not know the name of the shop keeper in the Trading Co. who sold me the calicoes.

I bought the rice in a chinese shop but I do not know the name of it. I bought the rice in the same bag it is now in. I do not know when I bought it.

XX by Mr. Hindhaugh:

I bought the calicoes on 3.8.66. I won some money by gambling. It was at about 2 p.m. It was at Kukum central district Labour lines. I started gambling at 1 p.m. and finished at 2 p.m. I won £10. The calicos cost me 19 dollars. There are 5 fathoms of calico. I cannot say what prices I paid. I gave the money to the Chinaman. The ~~Chinaman~~ Chinaman gave me change. I bought also three fathoms from the Trading Co. I do not know how many fathoms I bought from each place. I say I bought Ex B at the Trading Co. I asked for 2 fathoms ^{each} of the Green and one piece of red and one fathom of the other piece of red. The total is 5 fathoms and 1 yard. I bought Ex A from the chinese shop. ~~Each~~ Each piece has one fathom. ~~There were nine fathoms there.~~ I deny that there were nine fathoms there. (Cloth measured roughly- just on 9 fathoms in total).

I deny that PW2 sewed that cloth (Ex A). I did it myself. PW2 is lying. I sewed the cloth in my sister's house. I did it on 3.8.66. My sister was not present when I did it. I was alone. My sister let me go there. I did not ask permission to use her sewing machine. I just used it. I have no witnesses to say I sewed the calico Ex A.

I got Ex C from the rubbish heap of the house where PW1 works, on 3.8.66. I say that PW1 and 2 are ~~lying when they say~~ telling the truth but so am I. I

picked it off the rubbish heap. I never said Mr. Corner gave it to me. I said I knew the girl when I was working for Mr. Corner. The PW1 and 2 are lying when they identify the calicoes and the photograph. They are mine.

I cannot remember what I did on the night of 5/6.8.66. On that night I slept with my brother and not with PW7. I slept with ^{my} brother all night. PW7 is lying when he says that when he woke up a.m. 6.8.66 I was sleeping on the lower bunk in his room. I deny I slept with PW7 on the 5/6.8.66. When I said in the court below I was fishing off the wharf that night I was referring to the 8.8.66. I made a mistake in my answer to the question.

I bought the rice at the store on one day and went back to get it the next day. I do not know the name of the shop. I know the shop though. I cannot show you the shop because I might show you the wrong shop. It was a long time ago when I got the rice. In spite of the fact that I went twice to the shop I do not know the whereabouts of the shop now. I deny that I did not buy that rice. When I bought the rice ~~it~~ there was no name on the bag. (Ex D). Someone must have put the name on the bag. When I took the bag to my brother's house there was no name on it. I say one of my brother's household put that name on. Perhaps the police wrote it on. I deny that my story is not true. I deny the charges.

Isabel Boiney

Accused states he has no witnesses.

Addresses.

Mr. Hindhaugh: I submit the evidence is overwhelming. There is the evidence of the breaking and there is the identification of the property. The property except for the money is distinctive. The only defence which the accused has raised is that he bought the property himself and that all the relevant witnesses are lying. He cannot even say convincingly where he bought the goods. I submit a clear case is made out.

Accused: My defence is that I bought the property. I say that the witnesses are not telling the truth. Only that which is seen with the eye is true. No one says they saw me take those things, therefore I did not take them.

Judgement. Delivered as follows:

JUDGEMENT

The Accused in this case is charged with four counts. The first and the second count deal with the entry by night into the premises of Mr. Salusu, the first Prosecution Witness, and the theft therefrom of five pieces of cloth, \$7 in cash and one photograph. I shall deal with these two charges first.

I have absolutely no doubt whatever that the witnesses have identified these articles ^{accurately} and that those articles were found in the box belonging to the Accused. The Accused's evidence as regards the identification is that of course there were other pieces of calico similar to these in the shops and he says that he bought them in the same shops, in the same lengths, ^{and} in the same colours as the witnesses Salusu and his wife bought those cloths. ^{Beside two of those calicoes found Mr Salusu that} Now I don't believe a word of it. ^{As on 5/6. 1866} regards entry into the dwelling house of Salusu by night, we have the evidence of Salusu himself that he went to bed. He went to bed at about 12.30 at night, that was the early hours of the morning of the 6th, ^{and} that he bolted his bedroom door on the inside but in the morning when he woke up he found that that door was bolted on the outside. ^{and} He says he did not lock up the ^{door of} outside ^{room} ~~door~~ and he says that his belongings were in a box, and the photograph was in the ^{same} box, and the money was placed on a shelf inside a Passbook ^{in that outside room}. Sometime in the course of the night the thief opened the door of the outer room, secured his escape by sliding the bolt of the ^{door of the} inner room and then opened the box, took the things out, took the money from the Passbook and went away. Now entering a room even though it is not locked if the door is shut is a housebreaking. I have no doubt whatever that on the early morning of the 6th of August that is exactly what the Accused did. The evidence is overwhelming.

Now we come to the second two charges which concerned entry at night into the house of Benjamin Kiriau, Inspector Kiriau, and the theft of 25lbs of rice, ^{being} one half bag of rice. There again the room in which the rice was kept was not locked but it was shut and on the morning of the 9th the bag of rice was found to be missing and then on the 10th that bag of rice was taken by the Accused to his Brother's house and there it was deposited. ^{himself} and The Accused took it there. Now that bag of rice is a very distinctive bag of rice. It has written on it in ink "D. Kiriau", ^{and} the letters underneath "D.O.M." ^{Now} It is quite inconceivable that there ^{were} ~~is~~ two bags of rice marked in the same way. The accused says that when he took the bag of rice to his Brother's house it had no marking on it. On the other

hand Inspector Kiriau says that he received it from his Brother and it was already ^{then} marked with his brother's name "D. Kiriau". The Accused's answer is that the Inspector is not telling the truth. The Accused also says that his own brother and his own brother's wife are both not telling the truth. I do not believe a word of it and I find as a fact that that is the same bag of rice that was taken from Inspector Kiriau's quarters and was found in the possession of the Accused, ^{brother with whom the accused had deposited} The Accused says that he bought that rice from an unknown shop a long time ago and he suggests that either his Brother's family or the Police must have put the marking on it themselves. I think that explanation does not go far enough. Therefore I convict the Accused of the last two counts, that is of entering by night the house of Kiriau and also of the theft of 25lbs of rice.

Louisa Botting

Chief Justice

7. 10. 1966.

Mitigation:

Accused: I still say those goods are mine.
I have nothing to say in mitigation.
I have no W: to character.

LB

Mr. Hindhaugh:

The accused has 8 p.c.s

(List attached. Read to Accused. Accused admits each p.c. seriatim.)

Tha acc: is in his late thirties. He comes from Quawo village in the Reef islands. He is single. His parents are dead. He has no dependants. He has had no education. He has been living in or around Honiara since 1962. His first conviction was in 1963 and he has spent most of his time since then in prison. Between times he has occasionally taken domestic service.

1B.

Sentence:

Three years imprisonment in respect of each count 1 and 3.

One year imprisonment in respect of each count 2 and 4.

All sentences to run concurrently.

Order: Return goods exhibited to ~~respective~~ owners.

Louisa Boddery.
C.V.
7. 10. 1866.

Accused informed of his right of appeal.

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accused addressed on sentence xxxxxxxx follow

Before passing sentence Court addressed accused as follows:

Sentence:

Now Kio Society is getting very tired of you. You have spent your life since you have come to Honiara in and out of Prison. You came out of Prison the last time on the 3rd of August. On the night of the 5th and 6th of August you embarked on crime again. You have made no effort whatever to obtain employment and keep it and this kind of behaviour is going to stop. You are a liar and you are a thief. ~~Now~~ This time I am going to send you to Prison for three years. That will be three years in respect of the housebreaking, that is the first count and the third count, and I am going to send you to Prison for one year ~~that is~~ in respect of the 2nd and 4th counts. ~~Now~~ I am going to make these sentences run concurrently so that will ^{mean} be a term of three years altogether.

For the Court
C. J.

Order:

An Order will be made to return the calicoes and ^{other} goods to their respective owners.